



CENTER FOR ADVOCACY & POLICY

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April 20, 2017

The Honorable Rob Bonta
California State Capitol, Room 2148
Sacramento, California 95814

Re: AB 1479 – as amended 3/21/17
Support

Dear Assembly Member Bonta:

The American Civil Liberties Union of California is pleased to support your AB 1479 to create much-needed mechanisms for public agencies to comply with their existing, but often neglected, duties under the California Public Records Act (CPRA).

The right of the people to access information held by their government is enshrined in the state constitution because it is fundamental to democracy; the way to best ensure a responsive and accountable government is to ensure that the people know what the government is up to.

The CPRA advances this fundamental right by guaranteeing broad and timely access to public records. Regrettably, members of the public who seek information from government agencies often face unnecessary and improper roadblocks that undermine the CPRA's core purpose – either because of ignorance by government officials, or too often because of culture of government secrecy among many public agencies that prefer to operate in secret.

The ACLU makes regular use of the CPRA to better understand government behavior and inform debate on issues of public importance. However, we frequently encounter inappropriate deterrents, such as excessive charges for access to records. In one recent case, for example, we were forced to sue the City of Hayward when it refused to provide records related to activities by its police department during the 2014 Black Lives Matter protests in Berkeley unless the requester paid exorbitant and improper fees totaling \$3,247 for redacting videos, although the CPRA allows only charges for the direct cost of duplication. Although we prevailed in that lawsuit, it should never have been necessary to bring it.

Another common tactic is to simply delay access until the information sought is no longer of public interest, or the requester gives up seeking the records. For example, it took 16 months of persistence for newspapers in the Bay Area to gain access to information about sexual assault

1 See "Judge Rules Hayward Misinterpreted Records Law After Charging \$3,247 for Police Body Camera Video," <http://www.eastbayexpress.com/SevenDays/archives/2016/07/05/exorbitant-fees-to-make-police-body-camera-footage-public-illegal-judge-rules>.

incidents that have occurred at the University of California in the last three years.² As government agencies know, a less sophisticated requester, or even just a busy one, will usually give up a quest for information after facing delays to access and refusals to produce records. We have had numerous difficulties with the police departments of many cities, including Los Angeles. In November 2016, the ACLU of Southern California submitted a CPRA request to the Los Angeles Police Department requesting records reflecting the total number of CPRA requests received by the department in the last five years; the dates on which LAPD responded to those requests; the number of CPRA requests resulting in litigation; the oldest outstanding CPRA requests; and any policies or guidelines that LAPD applies to review, process, and respond to CPRA requests. LAPD never responded at all to our request.

AB 1479 provides important incentives to curtail such abuses by requiring each agency to identify a supervisor of records in order to centralize review of any determination by the agency that a request for records is denied, and by allowing recovery of punitive damages if a court finds that an agency or public official improperly withheld a public record from a member of the public without justification, failed to furnish a properly requested record or a portion thereof in a timely manner, assessed an unreasonable fee upon a requester, or otherwise did not act in good faith.

Sincerely,

Kevin G. Baker
Legislative Director

cc: Members and Committee Staff, Assembly Judiciary Committee

² See "University of California: Sexual misconduct widespread across 10 campuses," <http://www.mercurynews.com/2017/02/28/university-of-california-details-emerging-on-100-sexual-harassment-cases-systemwide-new-documents-show/>)